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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,695	03/29/2004	Mark James Kline	9595	1368
27752 7590 11/19/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION - WEST BLDG. WINTON HILL BUSINESS CENTER - BOX 412 6250 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER BOGART, MICHAEL G	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 11/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,695

Applicant(s)

KLINE ET AL.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 8-10, 12-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-10, 12-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 August 2007 has been entered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 6, 8-10, 12-15 and 17-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 5-20 of copending Application No. 10/811,696. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '696 application teaches every element of the instant invention except for a second stretch region. Mere duplication of parts is not sufficient to patentably distinguish an invention over the prior art. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8-10 and 17-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Drobin *et al.* (US 5,571,096 A; hereinafter "Drobin").

Drobin teaches a unitary disposable absorbent article (20), comprising:

an absorbent core (28) having a garment-facing surface and a body-facing surface;

a liquid permeable topsheet (24) positioned adjacent said body-facing surface of said absorbent core (28);

a liquid impermeable backsheet (26) positioned adjacent said garment-facing surface of said absorbent core (28); said backsheet (26) having:

a first backsheet zone (48) with a first particular basis weight, and

a second backsheet zone (46), longitudinally outboard from the first backsheet zone, with a second particular basis weight;

at least one elastomeric element (34, 65) having at least one primary direction of stretch, said elastomeric element (34, 65) at least partially overlapping and joined to said second backsheet zone (46)(col. 13, lines 1-8, incorporating by reference U.S. Pat. No. 4,515,595 to Kievet *et al.*, which discloses an elastomeric element which extends across the entire transverse width of the waist portions);

a first stretch region (34, 46) having lateral stretch; and

a second stretch region (34, 44) having lateral stretch; wherein said first stretch region is capable of co-elongating with said second stretch region (see figure 2, *infra*). The limitation concerning the co-stretchability of the elastic elements is functional. An apparatus claim must be structurally distinguishable over the prior art. MPEP § 2114.

Drobin teaches that the apertures may be formed by cutting holes out of a film without forming cones, such that the apertures will have a caliper the same as the film thickness, which necessarily means that some material will be removed from the film leaving it with a decreased density and basis weight (col. 9, lines 28-30). The result is that the unperforated portion (82) of the backsheet (26) has a greater basis weight and density than the perforated portions (80). First backsheet zone (46) has a much larger area that is perforated than second backsheet zone.

Regarding claim 2, Dobrin teaches that the waist elastics (34) are attached in an elastically contractible condition (col. 10, line 63-col. 11, line 19; incorporating by reference Buell *et al.* (US 5,330,458)).

Regarding claim 3, the first stretch region (34, 46) includes second backsheet zone (46).

Regarding claim 4, second stretch region (44) includes at least one ear (30).

Regarding claim 6, Dobrin teaches that the first backsheet zone (48) and said second backsheet zone (46) overlap the longitudinal axis (100).

Regarding claim 8, Dobrin teaches a front waist region (46), back waist region (44), a crotch region (48) a buttocks region (rear portion of crotch (48)) near rear waist region (44); said first backsheet zone (74) being primarily located in said crotch and front waist region (46), wherein the second backsheet zone (76) is located partially in the back waist region (44).

Regarding claim 9, Dobrin teaches a front waist region (46) back waist region (44), a crotch region (48) a buttocks region (rear portion of crotch (48)) near rear waist region (44);

said first backsheet zone (74) being primarily located in said crotch and front waist region (46), wherein the second backsheet zone (76) is located partially in the buttocks region.

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Regarding claim 10, the elastic member is curved in use as the diaper conforms to a wearer.

Regarding claim 14, Dobrin teaches a third backsheet zone (44), longitudinally outboard from the first backsheet zone (46) and longitudinally inboard to the second backsheet zone (46).

Regarding claim 17, Dobrin teaches that the rear waist elastics (34) are attached in an elastically contractible condition (col. 10, line 63-col. 11, line 19; incorporating by reference Buell *et al.* (US 5,330,458)).

Regarding claim 10, the elastic member is curved in use as the diaper conforms to a wearer.

Regarding claims 19 and 20, Dobrin teaches a diaper/pant.

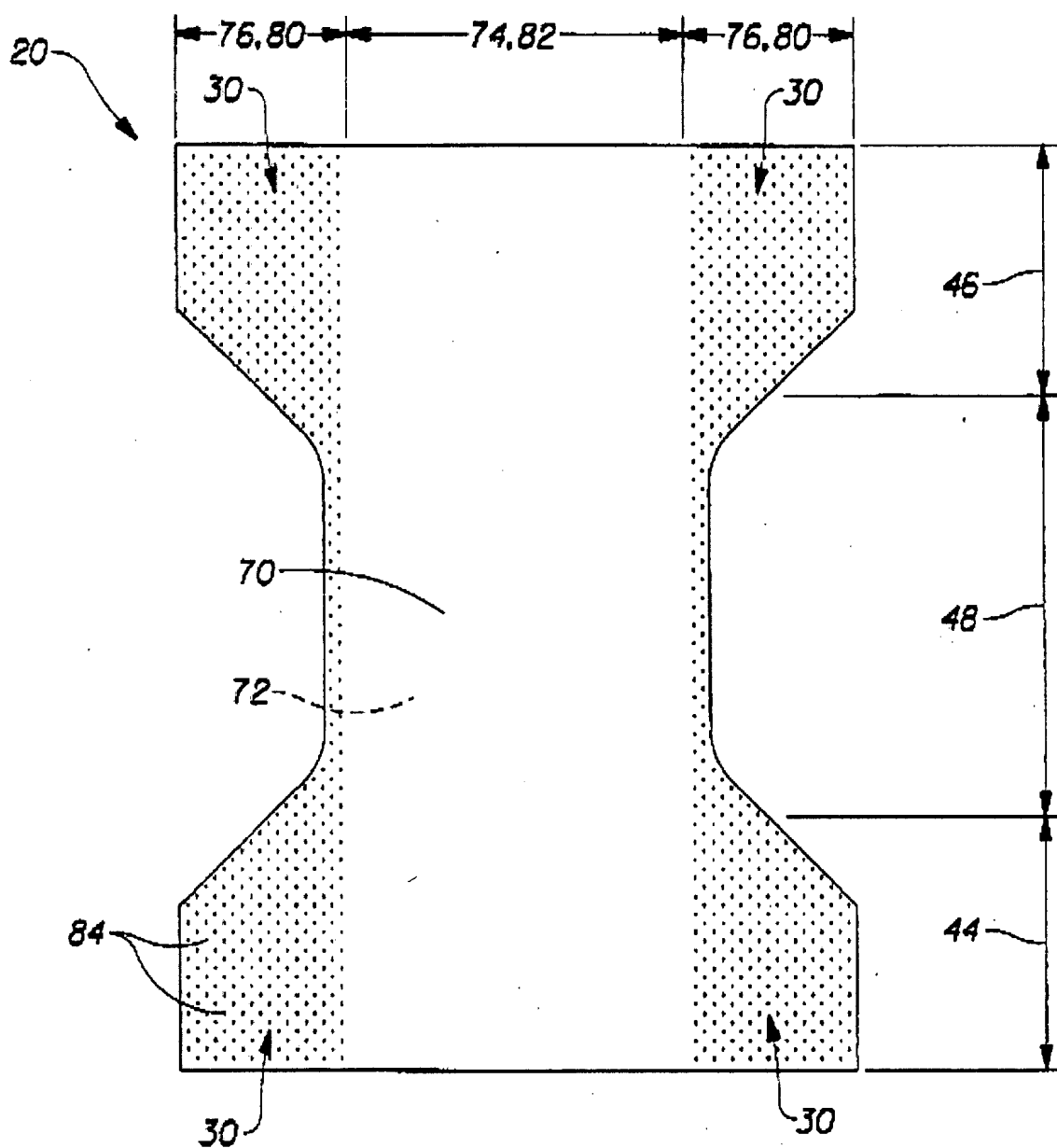


Fig. 2

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 12, 13, and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dobrin.

Dobrin does not teach the specific ratio of basis weights of the backsheet zones or the ration of the relaxed length of the absorbent element to that of the backsheet.

Generally, differences in ranges of parameters will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977).

In the instant case, one of ordinary skill in the art would have recognized the benefits of optimizing the basis weight of various layers or the stretch characteristics of the elastic element as they affect how an absorbent article will fit on a wearer.

Response to Arguments

Applicant's arguments filed 21 October 2007 have been fully considered but they are not persuasive.

Applicants assert that Dobrin does not teach a second backsheet zone longitudinally outboard from the first backsheet zone with a second basis weight that is less than the first basis weight. This argument is not persuasive because the first zone is now considered to be element (48) which contains a much smaller perforated area than second zone (46). Thus the first zone (48) would have a higher basis weight than the second (46).

Applicants' remarks concerning the rejections under Roe are moot in light of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

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In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
13 November 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

